necessary to have recourse to the contract, and is permitted only because of the desire of courts to do justice, as far as possible, to the party who has made payment or delivered property under a void agreement, and which in justice he ought to recover. *Pullman's Palace Car Co.* v. *Central Transp. Co.*, 171 U. S. 138 151, 18 Sup. Ct. 808, 813, 43 L. Ed. 108, 114, and cases there cited. But where property is delivered, and the consideration therefor paid, under and in pursuance of a void contract; where, in other words, the agreement is no longer executory, but has been executed, the courts leave the parties precisely where they have placed themselves."

Citing *St. Louis &c. R. R. Co.* v. *Terre Haute &c. R. R. Co.*, 145 U. S. 393.

LIBEL—PRIVILEGED COMMUNICATIONS.—An answer in an action against a fire insurance company on a policy, alleged that plaintiff had intentionally burned or procured to be burned the property claimed to have been lost, and that in the proofs of loss he had grossly overestimated their value. In an action for libel against the insurance company it was *Held*, That these statements were relevant and pertinent as matters of defense, and were absolutely privileged. *McGehee* v. *Insurance Co.* (C. C. A.), 112 Fed. 853.

Citing Townsh. Sland. & L., sec. 221; Folkard's, Starkie, Sland. sec. 196; Odgers, Lib. & Sland. p. 141; *Wilson* v. *Sullivan*, 81 Ga. 238, 7 S. E. 274; *Gains* v. *Insurance Co.* (Ky.), 47 S. W. 884; *Abbott* v. *Bank* (Wash.), 56 Pac. 376; *Sherwood* v. *Powell* (Minn.), 63 N. W. 1103, 29 L. R. A. 153, 53 Am. St. Rep. 614; *Jones* v. *Brownlee* (Mo.), 61 S. W. 795, 53 L. R. A. 445; *Johnson* v. *Brown*, 13 W. Va. 119; *Shelfer* v. *Gooding*, 47 N. C. 181; *Gardemal* v. *McWilliams*, 43 La. Ann. 457, 9 South. 106, 26 Am. St. Rep. 195.

McCormick, Circuit Judge, dissenting, quoted the following from *White* v. *Nicholls*, 3 How. 266:

"We conclude, then, that malice may be proved, though alleged to have existed in the proceedings before a court, or legislative body, or any other tribunal or authority, although such court, legislative body, or other tribunal may have been the appropriate authority for redressing the grievance presented to it; and that proof of express malice in any written publication, petition, or proceeding addressed to such tribunal will render that publication, petition, or proceeding libelous in its character, and actionable, and will subject the author and publisher thereof to all the consequences of libel. And we think that in every case of a proceeding like those just enumerated falsehood and the absence of probable cause will amount to proof of malice."

See *ante*, p. 648.

CARRIERS—TICKET CONTRACT—RIGHT TO STOP OFF.—Plaintiff purchased a ticket from one point to another, with the privilege, verbally given by the ticket agent, of stopping off at an intermediate point, before reaching which the ticket-coupon to destination was taken up by conductor against plaintiff's protest. Plaintiff having stopped at the intermediate point, and afterwards re-taking his journey, his fare was demanded, and upon his refusal to pay, he was ejected from the train. The trial court directed a verdict for the defendant, on the ground that, as between the conductor and passenger, the ticket was conclusive evidence of the contract. *Held*, error. *Scofield* v. *Penna. Co.* (C. C. A.), 112 Fed. 855.

Per Severens, Circ. J.:

"It was held by the Supreme Court in *Railroad Co.* v. *Winter's Adm'r*, 143 U. S. 60, 12 Sup. Ct. 356, 36 L. Ed. 71, that a passenger's ticket is not necessarily